

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 50

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AND GUARDIANSHIP SERVICES

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Subchapter 1

Foster Care General Requirements

37.50.101 DEFINITIONS The following definitions apply to the rules contained in this subchapter.

(1) "Daily rate" means the rate the department will pay to facilities for supervision and treatment services. The daily rate is a percentage of the model rate and is based upon the department's appropriation for foster care services.

(2) "Department" means the department of public health and human services.

(3) "Facility" means child care agencies and youth group homes as defined in ARM 37.97.102 and child placing agencies as defined in ARM 37.93.101.

(4) "Foster care" or "substitute care" means full-time care of a child in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction and, if necessary, treatment to children who are removed from or without the care and supervision of their parents or guardian.

(5) "Model rate" means the rate established by the department for the essential programmatic costs of the supervision and treatment services the department requires for each classification level.

(6) "Professional staff" means staff employed by the facility who have a bachelor's, master's degree or doctorate in social work, counseling, psychology or a related field.

(7) "Voluntary placement" means an out-of-home placement of a child by the department after the parents or guardians have requested the assistance of the agency and signed a voluntary placement agreement.

(8) "Voluntary placement agreement" means a written agreement between the department and the parents or guardians of a child which contains the consent of the parents or guardians to placement in foster care and the rights and obligations of the parents or guardians, and the department while the child is in placement.

(9) "Youth" means any person under the age of 18.

(10) "Youth care facility (YCF)" means a licensed facility in which foster care is provided and includes youth foster homes, youth group homes and child care agencies. (History: Sec. 41-3-1103 and 52-1-103, MCA; IMP, Sec. 41-3-1103 and 52-1-103, MCA; NEW, 1988 MAR p. 2035, Eff. 7/29/88; AMD, 1995 MAR p. 2462, Eff. 11/23/95; AMD, 1996 MAR p. 458, Eff. 2/9/96; TRANS & AMD, from DFS, 1998 MAR p. 488, Eff. 2/13/98.)

Rules 02 through 04 reserved

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37.50.105 GENERAL REQUIREMENTS (1) The department may place a child in substitute care pursuant to:

- (a) a court order;
- (b) emergency protective services as authorized by 41-3-301, MCA;
- (c) a voluntary placement agreement entered by the department and the parents or guardians of the child; or
- (d) other lawful authority.

(2) Children who meet the criteria set forth in (1), will be evaluated by the department to determine the accessible, available and appropriate type of placement. (History: Sec. 41-3-1103 and 52-1-103, MCA; IMP, Sec. 41-3-1103, 41-3-1122 and 52-1-103, MCA; NEW, 1988 MAR p. 2035, Eff. 7/29/88; AMD, 1996 MAR p. 458, Eff. 2/9/96; TRANS, from DFS, 1998 MAR p. 488.)

37.50.106 VOLUNTARY PLACEMENT (1) Voluntary placement should not exceed 6 months in duration.

(2) Voluntary placement agreements will generally not be accepted if:

(a) the child requests placement to avoid being held responsible for the child's behavior or because of conflicts with the parents or guardians; or

(b) the parents or guardians request placement because of behavior problems of the child or conflict with the child;

(c) In cases where requests for voluntary placement agreements are denied, the department will make appropriate referrals for services for the family to address these problems.

(3) The department will generally accept voluntary placement agreements only if:

(a) the child is in danger of being abused or neglected;

(b) the parents or guardians, as a result of unavoidable circumstances, are temporarily absent from the home, and no other placement alternatives are available;

(c) the parents or guardians are unable to provide adequate care for the child because of extreme temporary stress; or

(d) the parents or guardians are worried about their hostile, abusive or neglectful feelings toward their child and are willing to voluntarily seek the assistance or services necessary to assure the child can be returned to them as soon as possible.

(4) If any of the following conditions exist, voluntary placement agreements will generally not be substituted for appropriate legal action to protect the child:

(a) the parents or guardians have severely abused or neglected the child;

(b) the parents or guardians have abused or neglected the child and department services have been offered and previously refused or were previously accepted but have been unsuccessful;

(c) the parents' or guardians' behavior is dangerous to the child; or

(d) the parents or guardians by their words or actions have indicated a desire to relinquish their parental rights or abandon the child. (History: Sec. 41-3-1103 and 52-1-103, MCA; IMP, Sec. 41-3-1103, 41-3-1122 and 52-1-103, MCA; NEW, 1988 MAR p. 2035, Eff. 7/29/88; AMD, 1996 MAR p. 458, Eff. 2/9/96; TRANS, from DFS, 1998 MAR p. 488.)

Subchapter 2 reserved

Subchapter 3

Foster Care Maintenance Payments

37.50.301 FOSTER CARE MAINTENANCE PAYMENTS (1) If the child is found eligible for substitute care placement and foster care maintenance payments, the department shall make payment to the licensed youth care facility where the child is placed according to the rate established by the department for such facilities. (History: Sec. 41-3-1103, MCA; IMP, Sec. 41-3-302 and 41-3-1103, MCA; NEW, 1984 MAR p. 1412, Eff. 9/28/84; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 488.)

Rules 02 through 04 reserved

37.50.305 FOSTER CARE OVERPAYMENTS AND UNDERPAYMENTS

(1) The department is entitled to promptly recover the amount of any foster care overpayment made to a foster care provider. Recovery will be accomplished by the provider making payment of the overpayment within 30 days of notification of the overpayment. If the provider fails to repay the overpayment within 30 days, the department may reduce future foster care maintenance payments until the overpayment is recovered in full.

(2) Where an underpayment of foster care maintenance payments is made it will be corrected by increasing the payment for the following month to cover the underpayment.

(3) The provider shall promptly notify the department of any overpayment or underpayment. (History: Sec. 41-3-1103, MCA; IMP, Sec. 41-3-1103, MCA; NEW, 1988 MAR p. 825, Eff. 4/29/88; TRANS, from DFS, 1998 MAR p. 488.)

37.50.306 FOSTER CARE RIGHT TO FAIR HEARING (1) Any person aggrieved by an adverse department determination denying foster care maintenance payments or demanding recovery of a foster care overpayment may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337. (History: Sec. 2-4-201 and 41-3-1103, MCA; IMP, Sec. 41-3-302 and 41-3-1103, MCA; NEW, 1984 MAR p. 1412, Eff. 9/28/84; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1988 MAR p. 825, Eff. 4/29/88; AMD, 1988 MAR p. 1254, Eff. 6/24/88; AMD, 1995 MAR p. 1424, Eff. 7/28/95; TRANS, from DFS, 1998 MAR p. 488; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 07 through 09 reserved

37.50.310 FOSTER CARE PAYMENTS TO FACILITIES (1) The department shall make payments to facilities for the care of youths who have been approved by the department for placement into the facility. The rate of payment shall be based upon the classification of the facility according to ARM 37.50.315.

(2) Facilities in the state of Montana must be licensed by the department or responsible tribal authority, and must have a current contract with the department to be eligible for payments for foster care from the department. (History: Sec. 41-3-1103 and 52-1-103, MCA; IMP, Sec. 41-3-1103, 41-3-1122 and 52-1-103, MCA; NEW, 1989 MAR p. 20, Eff. 1/13/89; TRANS, from DFS, 1998 MAR p. 488.)

Rules 11 through 14 reserved

37.50.315 FOSTER CARE CLASSIFICATION MODEL (1) Each facility shall be classified according to the department's classification model. The model identifies seven levels of supervision and three levels of treatment. A model rate has been assigned to each level of supervision and treatment.

(2) Each facility wishing to contract with the department shall be classified according to ARM 37.50.316 to determine the daily rate the department would offer the facility for foster care services provided by the facility. The daily rate will be a percentage of the model rate for the facility's classification. The department may pay less than the daily rate if the facility requests less than the daily rate.

(3) There are seven levels of supervision in the classification model:

(a) In Level I the facility provides the basic living needs of the youth, including shelter, food, transportation and clothing by placing the youth in community family therapeutic foster homes. Trained foster home parents provide a skilled role model to carry out the implementation of the community based treatment plan for the youth. The facility provides supervision based upon an assessment of the youth's needs and a specific written case plan that is monitored to determine its effectiveness in reducing the need for this level of supervision.

(b) In Level II the facility provides the basic living needs of the youth, including shelter, food, transportation and clothing. In addition to the provision of these basic needs, the facility employs paid caretakers who provide day-to-day supervision of the youth in a family-like setting. This level of supervision does not require individual assessment of the youth and/or the development of treatment plans to determine structured activities or provide the day-to-day care and guidance of the youth.

(c) In Level III the facility provides the basic living needs of the youth, employs caretakers who provide the day-to-day supervision of the youth in a family-like setting, and a paid director to coordinate the facility's operations.

(d) In Level IV the facility provides the basic living needs of the youth and employs shift staff who provide 24-hour structured supervision of the youth and administrative personnel. This level of supervision utilizes planned structured supervision by trained staff. The facility provides activities and supervision based upon an assessment of the youth's needs and a specific written case plan that is monitored to determine its effectiveness in reducing the need for structured supervision.

(e) In Level V the facility provides the basic living needs of the youth, and employs shift staff who provide 24-hour intensive supervision with backup staff available. The facility also employs administrative personnel. The facility provides constant control of the youth by highly trained staff in a planned treatment environment. This level of supervision requires individual assessment of the youth and the development, implementation and monitoring of an individual written treatment plan by professional staff.

(f) In Level VI the facility provides the basic living needs of the youth including food, shelter, transportation, and clothing. The Montana department of public health and human services pays licensed providers for the treatment portion of the per diem payment for therapeutic youth group homes currently classified as Level VI under this subsection. Therefore, no level of treatment in (4) of this rule applies to therapeutic youth group homes. However, as a prerequisite to licensure under the department's licensing rules in ARM Title 37, chapter 97, therapeutic youth group homes must abide by the applicable child/staff ratios for all staff including but not limited to program managers and lead clinical staff persons. For the purpose of calculating the ratio to check for compliance under the licensing requirements, only full-time contracted or employed program managers and lead clinical staff persons, or the equivalent number of part-time program managers and lead clinical staff persons, may be counted as "one" program manager or lead clinical staff person. Full-time program manager or lead clinical staff person means a program manager or lead clinical staff person who normally works for the therapeutic youth group home 40 hours per week.

(g) In Level VII, a facility must be licensed as a child care agency-maternity home. A facility at this level provides the basic living needs of pregnant and parenting youth, including food, shelter, transportation, recreation and clothing. The facility also provides the basic living needs of the child or children of the parenting youth, including food, shelter, baby formula, diapers, transportation, clothing, and access to day care services. Shift staff shall be employed to provide 24-hour intensive supervision in a home-like environment with back-up staff available. The facility may reduce the number of shift staff required for intensive supervision during hours in which the youth attend public school when a professional staff is on the premises who is able to perform all shift staff duties as necessary. In addition, the facility will employ a program manager who provides program oversight and the functions described in ARM 37.97.206(10), and administrative support personnel. Professional staff shall be employed to provide counseling and case management services, to include: individual and group counseling designed to address the youth's mild delinquent, emotional, social and/or behavior problems; development, implementation, and monitoring of individualized written case plans for each youth; to assist shift staff in the initial and ongoing assessment of the safety and well being of each youth and child in residence; and will assist shift staff in teaching skill-building techniques, parenting, and life management skills to parenting youth to facilitate the acceptable adjustment to a community and/or family setting.

(4) There are three levels of treatment in the classification model:

(a) In basic treatment professional staff employed by the facility provide structured individual and group therapeutic services designed to address the youth's mild delinquent, emotional, social and/or behavior problems. Staff implements skill-building techniques to assist the youth in progressing toward an acceptable adjustment to his family, school and/or community. This level of treatment requires more than the day-to-day supervision by caretakers.

(b) In intermediate treatment trained shift staff, under the supervision of professionals, perform assessments, develop and implement planned interventions designed to address an individual youth's serious delinquent, emotional, social and/or behavior problems. Structured group and individual therapeutic services are provided according to the youth's written case plan.

(c) In intensive treatment intensive group and individual therapeutic services are provided by the facility to youth experiencing severe delinquent, emotional, social and/or behavior problems which prevent an acceptable adjustment to the youth's family, school and/or community. Treatment strategies are based upon an individual assessment of the youth and are administered according to a written treatment plan developed by the facility's professional staff. Group, individual and family therapy are provided by the facility's professional staff. The youth's medical and psychological needs are addressed in the youth's treatment plan and qualified, professional staff monitors the medical and psychological needs of the youth. All services are provided by the facility as part of the regular services provided.

(5) Facilities shall be classified by the department according to the above criteria. Each level of supervision and treatment is assigned a model rate on the model rate matrix of the department. Each classified facility will be offered a daily rate, which is a percentage of the model rate assigned to facilities in that classification.

(6) The department's model rate matrix, effective May 1, 2002, is hereby adopted and incorporated by this reference. Copies of the model rate matrix of the department are available upon request from the Department of Public Health and Human Services, Child and Family Services Division, Operations and Fiscal Bureau, 1400 Broadway, P.O. Box 8005, Helena, MT 59604-8005. The department shall review and revise its model rate matrix at least once every two years. (History: Sec. 41-3-1103, 52-1-103 and 52-2-603, MCA; IMP, Sec. 41-3-1103, 41-3-1122, 52-1-103 and 52-2-611, MCA; NEW, 1989 MAR p. 20, Eff. 1/13/89; AMD, 1993 MAR p. 147, Eff. 1/29/93; AMD, 1993 MAR p. 1208, Eff. 6/11/93; AMD, 1995 MAR p. 1118, Eff. 7/1/95; AMD, 1997 MAR p. 1663, Eff. 9/23/97; TRANS, from DFS, 1998 MAR p. 488; AMD, 2002 MAR p. 1557, Eff. 5/31/02.)

37.50.316 FOSTER CARE CLASSIFICATION PROCEDURES

(1) Effective January 15, 1989, all facilities providing foster care under contract to the department shall be classified according to the level of treatment and supervision provided. Any facility that does not have a contract with the department may request classification at any time.

(2) The department shall request information from the facility regarding treatment and supervision services provided, population served and staffing of the facility. The department may conduct an on site visit at any time for purposes of assessing the classification of the facility.

(3) Each facility classified will be offered a daily rate which the department will pay for each day of care provided to children approved by the department for placement in the facility. The daily rate will be a percentage of the model rate established by the department for the classification.

(4) If the facility disagrees with the classification assigned by the department, the facility may submit a request for informal reconsideration within 30 days of written notification of the classification level.

(a) The request must state with particularity the reasons the facility believes the classification is incorrect and must include any supporting documentation the facility wishes to submit.

(b) The request for reconsideration shall be submitted to the Department of Public Health and Human Services, Child and Family Services Division, 1400 Broadway, P.O. Box 8005, Helena, MT 59604-8005.

(5) The department shall conduct an informal reconsideration of the classification within 15 days of receipt of the request for reconsideration and shall submit a decision in writing as to whether the classification will be changed.

(6) If the facility is dissatisfied with the result of the informal reconsideration, it may request an informal hearing before a panel comprised of the director, the evaluation bureau chief and a representative from another facility.

(a) The request for an informal hearing must be submitted in writing within 10 days of the receipt of the results of the informal reconsideration.

(b) An informal hearing shall be held within 20 days of the receipt of the request for hearing.

(c) The panel will consider all matters relevant to the level of supervision and the level of treatment provided at the facility, and shall make a determination whether the facility has been properly classified according to the rules of the department.

(d) The decision of the panel shall be the final decision of the department.

(7) The facility's current classification shall remain in effect pending the outcome of any reconsideration or appeal.

(8) The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA do not apply to informal reconsideration or hearing proceedings under this rule. (History: Sec. 41-3-1103, 52-1-103 and 52-2-603, MCA; IMP, Sec. 41-3-1103, 41-3-1122, 52-1-103 and 52-2-611, MCA; NEW, 1989 MAR p. 20, Eff. 1/13/89; TRANS, from DFS, 1998 MAR p. 488; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 17 through 19 reserved

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37.50.320 FOSTER CARE FACILITY CONTRACTS (1) Facilities that have been classified may apply for a contract with the department on a form provided by the department.

(2) At least 30 days prior to the expiration of the contract, each facility wishing to contract with the department shall submit an application for a new contract.

(3) The department shall select contractors on the basis of the department's need for the services provided by the facility. The selection process may include information regarding the contractor's history of providing services to children. The selection process shall include:

(a) a review of the department's access to similar services currently provided in the state or region;

(b) an overview of the children placed by the department requiring these services;

(c) a review of the cost for the service compared with available funding sources and appropriations; and

(d) a determination regarding the appropriateness of the service for children placed by the department.

(4) Each facility shall retain its classification and daily rate until the expiration of the current contract, unless written consent is provided by the department. Any facility wishing to change its classification at the expiration of the contract or during a contract period must request reclassification in writing at least 90 days prior to the proposed effective date for the reclassification. The written request shall present the justification for the reclassification. The justification shall include a discussion of the financial impact on the department, the impact on the children currently placed at the facility, and the anticipated results of the change for the department and the facility, and the anticipated results of the change for the department and the facility. Upon receipt of a request for reclassification, the department will follow the procedures set forth in ARM 37.50.316 and 37.50.320 to reclassify and assign a daily rate to the facility. (History: Sec. 41-3-1103, 52-1-103 and 52-2-603, MCA; IMP, Sec. 41-3-1103, 41-3-1122, 52-1-103, 52-2-603 and 52-2-611, MCA; NEW, 1989 MAR p. 20, Eff. 1/13/89; TRANS, from DFS, 1998 MAR p. 488; AMD, 2003 MAR p. 486, Eff. 3/14/03.)

Subchapter 4

Foster Care Review Committee

37.50.401 FOSTER CARE REVIEW COMMITTEE (1) The committee will conduct a review of any child placed in a licensed family foster home, a child care agency, group home or treatment facility if the child is placed under the supervision of the department or placed by the department or the department pays for the care of the child.

(2) At least one committee shall be appointed in each judicial district in the state by the youth court judge in consultation with the department.

(3) The committee shall be composed of not less than five nor more than seven members including:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of the children in foster care placements not employed by the youth court or department;

(d) a representative of a local school district;

(e) the foster parent of the child whose care is under review, if there is one. The foster parent's appointment is effective only for and during that review;

(f) if the child under review is an Indian, an Indian person or a person knowledgeable about Indian cultural and family matters who is appointed for that review only.

(4) Three of the five required committee members must be in attendance to constitute an official review.

(a) A chairperson shall be selected by the committee prior to each meeting.

(5) Except for initial reviews under this rule, there shall be a foster care committee review once every 6 months on each child who has been in foster care for a period of more than 6 months.

(6) The person responsible for the placement of a child should not be a committee member when the committee reviews that child's placement. (History: Sec. 41-3-1115, MCA; IMP, Sec. 41-3-1115, MCA; NEW, 1982 MAR p. 609, Eff. 3/26/82; AMD, 1983 MAR p. 1550, Eff. 10/28/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1990 MAR p. 728, Eff. 4/3/90; AMD, 1995 MAR p. 281, Eff. 2/24/95; TRANS, from DFS, 1998 MAR p. 488.)

37.50.402 SUBJECT OF FOSTER CARE REVIEWS (1) Foster care reviews must specifically consider the following:

(a) Are the child, parents, foster parents receiving appropriate services designed to get the child home?

(b) Have reasonable efforts been made by the placing agency to return the child to his or her home?

(c) Can the child return home? If not, why not? What efforts must be made by the parents and agency before the child can return home?

(d) In the interim, is this placement the least restrictive, most appropriate and as close as possible to the parents' home so as to facilitate visitation?

(e) Does the child's treatment plan need to be modified?

(f) By what date may it be expected that the child will return home, be placed for adoption or other alternative permanent placement situation (i.e., permanent foster care or guardianship)?

(g) To what extent have the parents visited the child, what attempts has the placing worker made to facilitate visitation, and any reason why visitation has not happened?

(2) The committee shall be provided with written information by the placing agency necessary to answer all questions found in (1) of this rule 10 days prior to their meeting date. Supporting documentation available for review at the committee meeting shall include:

(a) current social information;

(b) placement history;

(c) treatment plan;

(d) description of activities and observations of worker;

(e) court orders;

(f) available psychological and psychiatric information regarding the child/family;

(g) placement worker's recommendation for continued placement or return to the family. (History: Sec. 41-5-807, MCA; IMP, Sec. 41-5-807, MCA; NEW, 1982 MAR p. 609, Eff. 3/26/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 488.)

Rules 03 and 04 reserved

37.50.405 REPORTS OF FOSTER CARE REVIEW COMMITTEE (1) The committee, after reviewing the information provided, shall submit a written report to the judge, the department and placing agency summarizing their findings and recommendations within 30 days of the review date. The report shall include:

- (a) answers to questions in ARM 37.50.402;
- (b) recommendations and reasons as to continuation or discontinuation of foster care;
- (c) treatment needs of child.

(2) The following people may participate in foster care review meetings:

- (a) committee members;
- (b) placing workers and/or supervisor;
- (c) foster care provider, parents and child/youth (if appropriate) may attend if they wish;
- (d) child's guardian ad litem;
- (e) other people as appropriate.

(3) Confidentiality of foster care review.

(a) All members of the committee and all persons present at committee meetings are bound by the confidentiality policies of the department and shall be informed of the confidentiality of any information discussed at the meeting. Members and persons present are required to keep all information about the subject individuals confidential.

(b) All reports or written records of the committee shall be kept confidential subject to the requirements of the department (except as provided elsewhere in this rule). (History: Sec. 41-5-807, MCA; IMP, Sec. 41-5-807, MCA; NEW, 1982 MAR p. 609, Eff. 3/26/82; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 488.)

Rules 06 through 09 reserved

37.50.410 REDUCTION OF THE NUMBER OF CHILDREN IN FOSTER CARE (1) This rule sets the department's specific goal on the maximum number of children receiving assistance under Title IV-E of the Social Security Act (hereinafter referred to as IV-E children) who have been in foster care for 2 or more years.

(2) At the end of each fiscal year the department shall determine what percent of the total number of IV-E children in foster care are IV-E children who have been in foster care for 2 or more years. The department shall calculate the percentage by:

(a) determining the total number of IV-E children in foster care; and

(b) dividing the total number into the number of IV-E children who have been in foster care for 2 or more years.

(3) The department shall strive to reduce the percentage by 2% each fiscal year. (History: Sec. 41-3-1103, 52-1-103, 52-2-111, and 53-4-111, MCA; IMP, Sec. 41-3-1103, 52-2-111, 53-4-111 and 53-4-304, MCA; NEW, 1982 MAR p. 874, Eff. 4/30/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1996 MAR p. 1388, Eff. 5/24/96; TRANS, from DFS, 1998 MAR p. 488.)

Subchapter 5

Foster Care Support Services

37.50.501 FOSTER CARE SUPPORT SERVICES, PURPOSE (1) The purpose of this subchapter is to establish eligibility criteria for foster care support services. Payment for foster care support services may be made on behalf of foster children who require diapers, clothing, respite care, transportation (other than medically-related transportation) and other specific special services which are not available from other sources. (History: Sec. 41-3-1103, 53-2-201 and 53-4-111, MCA; IMP, Sec. 41-3-1103 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; AMD, 1993 MAR p. 1505, Eff. 7/16/93; AMD, 1993 MAR p. 2528, Eff. 10/29/93; TRANS, from DFS, 1998 MAR p. 488.)

37.50.502 FOSTER CARE SUPPORT SERVICES, DEFINITIONS For the purposes of this rule, the following definitions apply:

(1) "Foster child" means any person under the age of 18 years, without regard to sex or emancipation, who has been placed in a licensed youth foster home.

(2) "Foster care support services" means a diaper allowance, clothing allowance, respite care allowance, or other special need allowance paid on behalf of a foster child who has a documented need for such foster care support services.

(3) "Diaper allowance" means payments made on behalf of a foster child for diapers subject to the conditions and limitations set forth in ARM 37.50.505.

(4) "Clothing allowance" means payments made on behalf of a foster child for clothing subject to the conditions and limitations set forth in ARM 37.50.506.

(5) "Supplemental services allowance" means payments made on behalf of a foster child who requires educationally related services or equipment which is not available from any other source. Special needs include any documented special requirements necessary for the foster child, subject to the conditions and limitations set forth in ARM 37.50.510.

(6) "Respite care allowance" means payments made on behalf of a foster child for assistance necessary to provide foster parents with relief from the daily care requirements of foster children whose mental or physical condition requires special or more intense care. Respite care allowances are subject to the conditions and limitations set forth in ARM 37.50.511. (History: Sec. 41-3-1103, 53-2-201 and 53-4-111, MCA; IMP, Sec. 41-3-1103 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from SRS, 1987 MAR p. 1653, Eff. 7/1/87; AMD, 1993 MAR p. 1505, Eff. 7/16/93; AMD, 1993 MAR p. 2528, Eff. 10/29/93; TRANS, from DFS, 1998 MAR p. 488.)

Rules 03 and 04 reserved

37.50.505 FOSTER CARE SUPPORT SERVICES, DIAPER ALLOWANCE

(1) Any child under the age of 3 who is placed in a licensed foster home is eligible for a diaper allowance if:

(a) the child is expected to be in foster care for more than 30 days;

(b) the department is making foster care payments for the child; and

(c) there is a need for diapers as documented by the placing worker.

(2) The amount of the diaper allowance is \$40 per month per eligible child. (History: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA; IMP, Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA; NEW, 1993 MAR p. 1505, Eff. 7/16/93; AMD, 1995 MAR p. 930, Eff. 5/26/95; TRANS, from DFS, 1998 MAR p. 488.)

37.50.506 FOSTER CARE SUPPORT SERVICES, CLOTHING ALLOWANCE (1) Any child placed in a licensed youth foster home is eligible for a clothing allowance if:

(a) the child is expected to be in foster care for more than 30 days;

(b) the department is making the foster care payments for the child;

(c) there is a need for a basic wardrobe which has been documented by the placing worker; and

(d) the department has not already paid on behalf of the child the maximum amount in clothing allowances for the applicable and unexpired time period covering such child as set out in (2) of this rule.

(2) The amount of the clothing allowance is determined by the child's wardrobe and the extent to which clothing is needed, but in no case may the amount exceed \$400 per child for the consecutive 12-month period beginning on the date that the department makes the initial clothing allowance payment. The maximum amount of the clothing allowance may be paid in increments as determined by the department.

(3) The clothing allowance must be used to purchase necessary clothing for the child. The child's clothing, whether purchased with clothing allowance funds, or brought from home, goes with the child into each placement. (History: Sec. 41-3-1103, 53-2-201 and 53-4-111, MCA; IMP, Sec. 41-3-1103 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; AMD, 1991 MAR p. 1489, Eff. 8/16/91; AMD, 1993 MAR p. 1505, Eff. 7/16/93; TRANS, from DFS, 1998 MAR p. 488.)

Rules 07 through 09 reserved

37.50.510 FOSTER CARE SUPPORT SERVICES, SUPPLEMENTAL SERVICES ALLOWANCE (1) Any child placed in a licensed youth foster home is eligible for a supplemental services allowance if:

(a) the child is expected to be in foster care for more than 30 days;

(b) the department is making the foster care payments for the child;

(c) the need for a supplemental services allowance has been documented by the placing social worker; and

(d) all other possible resources have been exhausted.

(2) A supplemental services allowance is available for any documented special need of a foster child necessary to the child's health and welfare, subject to the limitations set forth in this rule.

(3) A supplemental services allowance for transportation costs will be authorized only for foster children who must travel to secure necessary special educational or training services.

(a) To be eligible for reimbursement for transportation costs, the following requirements must be met:

(i) travel one-way must be 10 or more miles;

(ii) transportation is necessary to obtain services not reasonably available in closer proximity to foster parents' residence; and

(iii) transportation is approved in advance by the department.

(4) Supplemental services allowances shall be limited to the lesser of:

(a) actual costs; or

(b) \$87.50 per month per child. (History: Sec. 41-3-1103, 53-2-201 and 53-4-111, MCA; IMP, Sec. 41-3-1103 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; AMD, 1993 MAR p. 1505, Eff. 7/16/93; AMD, 1993 MAR p. 2528, Eff. 10/29/93; TRANS, from DFS, 1998 MAR p. 488.)

37.50.511 FOSTER CARE SUPPORT SERVICES, RESPITE CARE ALLOWANCE (1) Any child placed in a licensed youth foster home is eligible for respite care allowance if:

(a) the child is expected to be in placement for more than 30 days;

(b) the department is making foster care payments for the child; and

(c) the child is:

(i) developmentally disabled and is either on a respite care waiting list or is otherwise not eligible for the respite care program of the developmental disabilities division; or

(ii) "medically demanding", e.g. non-ambulatory; or
(iii) suffering from severe emotional problems which are manifested in serious behavior problems.

(2) The amount of the respite care payment(s) shall not exceed:

(a) \$4 per hour per child for up to 8 continuous hours;
(b) \$32 per child for more than 8 hours and up to 24 hours.

(3) The amount of respite care payment(s) per child per year shall not exceed 111 hours for each placement. (History: Sec. 41-3-1103, 53-2-201 and 53-4-111, MCA; IMP, Sec. 41-3-1103 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; AMD, 1993 MAR p. 1505, Eff. 7/16/93; TRANS, from DFS, 1998 MAR p. 488.)

37.50.512 FOSTER CARE SUPPORT SERVICES, RESPITE CARE SELECTION AND TRAINING (1) For children eligible for respite care under ARM 37.50.511, foster parents may arrange for respite care services. The arrangement shall provide for respite care services from a qualified individual.

(2) Laws may require that foster parents fulfill employment obligations owed to respite care providers. Examples of laws which may apply are statutes and regulations imposing wage and overtime requirements on employers of domestic employees. The department has no role in imposing or exempting foster parents from the requirements. Nor does the department accept financial responsibility for payment which may result from imposition of employment-related requirements.

(3) Notwithstanding the disclaimer contained in (2) and the requirement for prior approval for all foster care support services under ARM 37.50.520, foster parents may be reimbursed for expenses arising from imposition of employment requirements. Examples of permissible reimbursements under this subsection include payment for social security contributions and/or payment in addition to the hourly/daily rate provided in ARM 37.50.511 as a result of wage and hour requirements.

(4) Foster parents regularly utilizing a respite care provider in their home may be denied reimbursement under (3) absent prior special approval from the regional administrator whose region is responsible for reimbursement of respite care for the child.

(5) The selection of the person to provide respite care is made by the foster parent. The foster parent shall consider the ability of the respite care provider to:

(a) meet the special needs of the foster child; and
(b) provide safe, developmentally appropriate care to the child.

(6) The foster parent provides any specific training which may be necessary to care for a particular child.

(7) A request for reimbursement for respite care services which includes information on the name and qualifications of the respite care provider must be made prior to the care being given.

(8) The department representative may deny the request for reimbursement if the foster parent fails to document that the respite care provider selected by the foster parent possesses the qualifications and ability to provide care for the foster child. (History: Sec. 41-3-1103, 41-3-1142, 41-3-1152 and 52-2-111, MCA; IMP, Sec. 41-3-1103, 41-3-1142, 41-3-1151 and 52-2-111, MCA; NEW, 1993 MAR p. 3019, Eff. 12/24/93; TRANS, from DFS, 1998 MAR p. 488.)

Rules 13 through 19 reserved

37.50.520 FOSTER CARE SUPPORT SERVICES, APPLICATION PROCESS

(1) Any foster parent may apply for foster care support services.

(2) All requests for foster care support services must be based upon need for the service as documented by the placing social worker.

(3) All applications for foster care support services must be approved by the department prior to obtaining or purchasing the support services. (History: Sec. 41-3-1103, 53-2-201 and 53-4-111, MCA; IMP, Sec. 41-3-1103 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 488.)

37.50.521 FOSTER CARE SUPPORT SERVICES, AVAILABILITY OF FUNDS (1) All of the foster care support services payments are contingent upon the availability of state funds appropriated for such services.

(2) The allowances may be reduced, denied or discontinued regardless of eligibility if there are insufficient available funds to pay for the foster care support services requested.

(3) When the entire amount of the annual appropriation for foster care support services has been exhausted, no more applications for foster care support services will be accepted. (History: Sec. 41-3-1103, 53-2-201 and 53-4-111, MCA; IMP, Sec. 41-3-1103 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 488.)

Rules 22 through 24 reserved

37.50.525 FOSTER CARE SUPPORT SERVICES, HEARING (1) Any person aggrieved by an adverse action of the department or its representatives regarding foster care support services may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337. (History: Sec. 2-4-201, 41-3-1103, 52-2-111 and 53-4-111, MCA; IMP, Sec. 41-3-1103, 52-2-111 and 53-4-111, MCA; NEW, 1985 MAR p. 1021, Eff. 7/26/85; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; AMD, 1988 MAR p. 1254, Eff. 6/24/88; TRANS, from DFS, 1998 MAR p. 488; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Subchapters 6 and 7 reserved

Subchapter 8

Children With Multiagency Service Needs

37.50.801 PLACEMENT OF CHILDREN WITH MULTIAGENCY SERVICE NEEDS WITH OUT-OF-STATE PROVIDERS, DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Placement by the department" means placement by the department of a child with multiagency service needs in the custody of the department or committed to the department pursuant to 41-3-403, 41-3-404, 41-3-406, or 41-5-523, MCA, with an out-of-state provider.

(3) "Out-of-state provider" means a residential treatment program that is an approved Montana medicaid provider of residential treatment or a program which is licensed in its state of residency to provide:

- (a) shelter care;
- (b) youth group home care;
- (c) therapeutic youth group home care;
- (d) therapeutic foster care;
- (e) residential treatment as a child care agency; or
- (f) an equivalent of the care described in this section.

(4) "Child with multiagency service needs" means a child as defined in 52-2-301, MCA. (History: Sec. 52-2-308, MCA; IMP, Sec. 52-2-301, 52-2-302, 52-2-303, 52-2-304, 52-2-305, 52-2-306 and 52-2-307, MCA; NEW, 1994 MAR p. 1996, Eff. 7/22/94; TRANS, from DFS, 1998 MAR p. 488.)

Rules 02 and 03 reserved

37.50.804 LIMITATIONS ON PLACEMENT OF CHILDREN WITH
MULTIAGENCY SERVICE NEEDS WITH OUT-OF-STATE PROVIDERS

(1) Placement of children with multiagency service needs with out-of-state providers shall occur only according to the applicable provisions of the memorandum of understanding entered by the department, the department of social and rehabilitation services, the department of health and environmental services, the office of public instruction, the Montana board of crime control, and the department of corrections and human services, dated July 1, 1993.

(2) The department hereby adopts and incorporates the memorandum of understanding referred to in (1) which sets forth the responsibilities, objectives and funding necessary for the member departments to establish and maintain a coordinated service system. A copy of the memorandum of understanding may be obtained upon request to the Department of Public Health and Human Services, Child and Family Services Division, P.O. Box 8005, Helena, Montana 59604. (History: Sec. 52-2-308, MCA; IMP, Sec. 52-2-301, 52-2-302, 52-2-303, 52-2-304, 52-2-305, 52-2-306 and 52-2-307, MCA; NEW, 1994 MAR p. 1996, Eff. 7/22/94; TRANS, from DFS, 1998 MAR p. 488.)

FOSTER CARE SERVICES
AND GUARDIANSHIP SERVICES

37.50.901

Subchapter 9

Interstate Compact on the
Placement of Children

37.50.901 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

(1) The department of public health and human services hereby adopts and incorporates by reference the regulations adopted by the association of administrators of the interstate compact on the placement of children as amended through April 30, 2000. These regulations interpret the interstate compact on the placement of children and include clarifications of the applicability of the interstate compact on the placement of children with regard to the following:

- (a) use of uniform forms;
- (b) interstate relocation by foster parents;
- (c) interstate placement of a child into the home of the child's parent, relative or nonagency guardian;
- (d) interstate placements of children in educational institutions, hospitals and institutions for the mentally ill or mentally defective;
- (e) the requirement of a central state office for all compact referrals;
- (f) a 6-month time limit on placement authorization;
- (g) procedures for priority placements;
- (h) appropriate use of forms to change placement purposes;
- (i) definition of a visit; and
- (j) applicability to guardianships.

(2) A copy of the regulations adopted by the association of administrators of the interstate compact on the placement of children as amended through April 30, 2000, can be obtained from the Department of Public Health and Human Services, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. (History: Sec. 41-3-1103, 52-2-111 and 53-4-111, MCA; IMP, Sec. 41-3-1101, 41-4-101, 52-2-111 and 53-4-114, MCA and Art. VII, of ICPC; NEW, 1986 MAR p. 1602, Eff. 9/26/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1994 MAR p. 1294, Eff. 5/13/94; AMD, 1997 MAR p. 316, Eff. 2/11/97; TRANS, from DFS, 1998 MAR p. 488; AMD, 2001 p. 676, Eff. 4/27/01.)

Subchapter 10 reserved

FOSTER CARE SERVICES
AND GUARDIANSHIP SERVICES

37.50.1101

Subchapter 11

Guardianship Services

37.50.1101 GUARDIANSHIP AND HOME APPROVAL (1) The prospective guardian and the home of the prospective guardian must meet the youth foster home requirements contained in ARM 37.97.1001 37.97.1002, 37.97.1006, 37.97.1011, 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018, and 37.97.1019.

(2) The child for whom guardianship is being considered must have resided with the prospective guardian for a minimum of 6 months.

(3) A written assessment of the prospective guardian and home of the prospective guardian shall be completed. The assessment must include a determination that the prospective guardian and home of the prospective guardian meet the requirements of this rule. The assessment must demonstrate the appropriateness of the proposed guardian to become the legal custodian for a specific child. Factors to be considered in determining the appropriateness of the proposed guardian include the proposed guardian's acceptance of the child's cultural, racial and religious heritage; knowledge of the child's history, including placement and loss history and the potential effect on the child's development and future functioning; understanding and acceptance of the continued role of the child's birth family; understanding and acceptance of the powers and duties of a guardian; and the desire of prospective guardian to become the child's guardian. (History: Sec. 41-3-1103, MCA; IMP, Sec. 41-3-421, MCA; NEW, 2000 MAR p. 864, Eff. 3/31/00.)

37.50.1102 STATE SUBSIDIZED GUARDIANSHIP (1) A child is eligible to have state subsidized guardianship payments made on the child's behalf if the child has been adjudicated a youth in need of care pursuant to Title 41, chapter 3, part 4, MCA.

(2) Subsidized guardianship payments may be made to the guardian of an eligible child when:

(a) the child meets the guardianship criteria found in 41-3-421, MCA;

(b) the prospective guardian and guardian's home meet the requirements of ARM 37.50.1101;

(c) the court has issued a decree of guardianship;

(d) an agreement describing the terms and conditions of the guardianship subsidy has been negotiated by the department with the prospective guardian; and

(e) the prospective guardian and the department have signed an agreement describing the negotiated terms and conditions of the subsidy prior to the issuance of the guardianship decree.

(3) Monthly payments and medical coverage as provided under Montana medicaid programs may be provided under a subsidized guardianship agreement. A child in a subsidized guardianship arrangement is not eligible for the foster care support services as provided for in ARM 37.50.501, 37.50.502, 37.50.505, 37.50.506, 37.50.510 through 37.50.512, 37.50.520, 37.50.521, and 37.50.525.

(4) The monthly payment must not exceed the family foster care maintenance payment for which the child is eligible at the time the guardianship is established.

(5) The subsidized guardianship agreement may be renegotiated at the request of either the guardian or the department.

(6) The subsidized guardianship agreement may be terminated if requested by or agreed to by the guardian.

(7) The subsidized guardianship agreement shall be terminated if the guardianship is revoked by the court or if the department determines that the subsidy is not being used to support the child. (History: Sec. 41-3-1103, MCA; IMP, Sec. 41-3-421, MCA; NEW, 2000 MAR p. 864, Eff. 3/31/00.)

FOSTER CARE SERVICES
AND GUARDIANSHIP SERVICES

37.50.1103

37.50.1103 FEDERALLY SUBSIDIZED GUARDIANSHIP (1) Under a child welfare demonstration project awarded by the federal department of health and human services, the department is authorized to utilize federal funds to pay guardianship subsidy on behalf of children who meet the requirements established under the terms and conditions of the demonstration project. The terms and conditions contract between the federal department of health and human services and the department is hereby adopted and incorporated by reference. Copies of the contract may be obtained on the department's web site at <http://www.dphhs.state.mt.us> or from the Department of Public Health and Human Services, Child and Family Services Division, 1400 Broadway, P.O. Box 8005, Helena, MT 59620-8005.

(2) Federally subsidized guardianship payments may be made to the guardian of an eligible child when:

(a) the requirements established under the demonstration project terms and conditions and the requirements of 37.50.1102(2)(b) through (7) are met.

(3) Children who meet the eligibility requirements established under the demonstration project will be randomly assigned to a service group or a control group.

(4) Only children assigned to the service group will be eligible to receive federally subsidized guardianship payments.

(5) The department must make an annual visit to the home of each child receiving a federally subsidized guardianship. (History: Sec. 41-3-1103, MCA; IMP, Sec. 41-3-421, MCA; NEW, 2000 MAR p. 864, Eff. 3/31/00.)

Chapter 51 reserved